

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re MICHAEL ERIK A.B. MAK, Petitioner

No. C 12-80118 MISC SI

For the Issuance of Discovery in Aid of Foreign
Proceeding Pursuant to 28 U.S.C. § 1782.

**ORDER GRANTING PETITIONER
MICHAEL ERIK A.B. MAK'S
APPLICATION FOR ISSUANCE OF
SUBPOENA TO GEORGE J. GROVER
PURSUANT TO 28 U.S.C. § 1782**

Petitioner Michael Erik A.B. Mak Shun Ming Hotung ("Petitioner") applies *ex parte* for the issuance of a subpoena pursuant to 28 U.S.C. § 1782. Petitioner seeks to subpoena George J. Grover in connection with a divorce proceeding between Petitioner and Chan Wei Guang currently taking place in the High Court of the Hong Kong Special Administrative Region Court of First Instance. According to Petitioner, on April 3, 2012, Mr. Grover presented an affidavit (the "Affidavit") under oath which Mr. Grover knew was to be presented as evidence in the court proceeding between Petitioner and Ms. Guang. Hill Decl. ¶ 3; Ex. A. In the Affidavit, Mr. Grover stated that Petitioner owns a collection of cars "worth more than US\$50,000,000." Hill Decl., Ex. A ¶ 19. Petitioner contests this assertion and seeks information from Mr. Grover regarding the factual basis of his claim.

DISCUSSION

The statute which authorizes federal courts to act upon foreign requests for assistance in obtaining documentary and testimonial evidence is 28 U.S.C. § 1782, which provides that, "the district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal." 28 U.S.C. § 1782(a). A district court is authorized to grant a § 1782 application,

where (1) the person from whom the discovery is sought resides or is found in the district of the district court to which the application is made, (2) the discovery is for use in a proceeding before a foreign tribunal, and (3) the application is made by a foreign or internal tribunal or "any interested person."

1 *In re Application for Appointment of a Commissioner re Request for Judicial Assistance for the Issuance*
2 *of Subpoena Pursuant to 28 U.S.C. § 1782*, No. C 11-80136 RS (MEJ), 2011 WL 2747302 (N.D. Cal.
3 July 13, 2011) (granting § 1782(a) application seeking issuance of subpoenas on blog publishing service
4 to identify individuals who authored an anonymous blog commenting on foreign labor dispute). In
5 addition, “[a] person may not be compelled to give his testimony or statement or to produce a document
6 or other thing in violation of any legally applicable privilege.” 28 U.S.C. § 1782. The Supreme Court
7 has held that § 1782 does not contain a “foreign-discoverability requirement”—*i.e.*, there is no
8 requirement that the information sought be discoverable under the law governing the foreign proceeding.
9 *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 260 (2004). The Supreme Court has also
10 held that a § 1782(a) applicant is not required to show that United States law would permit “discovery
11 in domestic litigation analogous to the foreign proceeding.” *Id.* at 263. “Section 1782 is a provision
12 for assistance to tribunals abroad. It does not direct United States courts to engage in a comparative
13 analysis to determine whether analogous proceedings exist here.” *Id.*

14 A district court has discretion whether to grant Section 1782 discovery. *Id.* at 264. The Supreme
15 Court has identified four additional factors when considering whether to allow discovery: (1) “when the
16 person from whom discovery is sought is a participant in the foreign proceeding . . . , the need for
17 § 1782(a) aid generally is not as apparent as it ordinarily is when evidence is sought from a
18 nonparticipant in the matter arising abroad”; (2) “the nature of the foreign tribunal, the character of the
19 proceedings underway abroad, and the receptivity of the foreign government or the court or agency
20 abroad to U.S. federal-court judicial assistance”; (3) “whether the § 1782(a) request conceals an attempt
21 to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United
22 States”; and (4) whether the request is unduly intrusive or burdensome. *Intel*, 542 U.S. at 264-65.

23 The Court has reviewed Petitioner’s application and has preliminarily determined that the
24 statutory requirements have been met. First, Mr. Grover resides within the Northern District of
25 California. Second, the discovery is for use in an ongoing divorce proceeding in Hong Kong. Third,
26 Petitioner, about whom Mr. Grover submitted his affidavit, is an interested person within the meaning
27 of the statute.
28

The Court also preliminarily finds that the discretionary factors identified by the Supreme Court weigh in favor of granting the application. Mr. Grover is not a party to the divorce proceeding, and therefore any documents relating to the statements made in his affidavit would be unattainable absent § 1782(a) aid. The Hong Kong court would presumably be receptive to the discovery request as it concerns information essential to obtaining accurate facts that bear on the divorce proceeding. Nothing before the Court suggests that Petitioner's § 1782 request is an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States. Finally, Petitioner's argument that the request is not unduly intrusive or burdensome because Mr. Grover voluntarily submitted his Affidavit is persuasive.


The Court therefore finds that Petitioner has established good cause to seek discovery from Mr. Grover. However, the Court's ruling does not preclude the subpoena from being contested on other grounds not presently before the Court. The Ninth Circuit has held that applications for subpoenas pursuant to § 1782 may be filed ex parte because "[t]he witnesses can . . . raise[] objections and exercise[] their due process rights by motions to quash the subpoenas." *In re Letters Rogatory from Tokyo Dist., Tokyo, Japan*, 539 F.2d 1216, 1219 (9th Cir. 1976). Mr. Grover shall therefore have twenty one calendar days after the service of the subpoena to contest it. The return date on the subpoena shall therefore be set twenty one days after service.

CONCLUSION

For the foregoing reasons discussed above in connection with § 1782, the Court finds that Petitioner has established good cause to seek discovery from Mr. Grover and therefore GRANTS Petitioner's application. The return date of the subpoena shall be set after the expiration of the 21 day period to allow Mr. Grover to contest the subpoena if he desires.

IT IS SO ORDERED.

Dated: May 31, 2012


SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE